IN THE HIGH COURT OF BOMBAY AT GOA

COMPANY APPLICATION NO. 28 OF 2005

IN

COMPANY PETITION NO. 7 OF 1998

SHRI MOHAN B.JADHAV ....Applicants

Versus

OFFICIAL LIQUIDATOR ....Respondents

Shri V. P. Thali, Advocate for the applicant.

Ms. Amira Razaq, Advocate for the respondent.

Coram:- S.S. PARKAR, J.

Date:- 15th July, 2005

P.C.

I have perused the application and heard both sides. By this application respondent No.2 has raised an objection about issue No.4 framed in the main petition, which reads as under :

> "4. Whether the respondent No.2 proves that he has not signed the relevant documents as guarantor for the loan advanced by the Company under liquidation to respondent no.1 ?"

Respondent No.2 has been joined as a guarantor for the loan advanced by the Company under liquidation to respondent No.1, which is denied by respondent No.2. Respondent No.2 has denied that he had signed the relevant documents as guarantor and, therefore, there is an issue for proving the obligation of respondent No.2 as guarantor for the loan advanced by the company to respondent No.1 debtor. Reliance is placed

on the provisions of Section 67 of the Evidence Act. Under the said provision, if a document is alleged to have been signed by any person, the signature alleged to hav been in that person's handwriting must be proved to be in his handwriting. The question is who will prove the signature of respondent No.2, which is disputed by him.

Issue No.4, as framed, casts burden on respondent No.2 to prove negatively that the disputed signature is not his, which cannot be done under law. Under Section 103 of the Evidence Act, the burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person. Since the signature of respondent No.2 is disputed by him, having stood as guarantor to the loan advanced to respondent No.1, the burden lies on the Company or the Official Liquidator to prove the signature of respondent No.2 on the documents of guarantee and, therefore, in the present case, the burden lies on the Official Liquidator.

In the circumstances, this application is allowed and issue No.4 in the Company Petition is recast as under :

> Whether the Official Liquidator proves that the respondent no.2 has signed the relevant documents as guarantor for the loan advanced by the Company under liquidation to respondent No.1 ?

The application stands disposed of accordingly.

S.S. PARKAR, J.